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SENATE

REPORT
No. 98–339

AMENDING THE WILD FREE-ROAMING HORSES AND BURROS ACT OF 1971 (16 U.S.C. 1331–1340), AS AMENDED

NOVEMBER 17 (legislative day, NOVEMBER 14), 1983.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 457]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 457) to require the protection, management, and control of wild free-roaming horses and burros on public lands, having considered the same, reports favorably thereon with an amendment to the text in the nature of a substitute and an amendment to the title and recommends that the bill as amended do pass.

The amendments are as follows:

On page 1, line 3, strike all after the enacting clause and insert in lieu thereof:

That the first section of the Act of December 15, 1971 (16 U.S.C. 1331–1340), hereinafter referred to as the "Act," is amended to read as follows:

"That Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West, and that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people. It is the policy of Congress that wild free-roaming horses and burros shall be protected from unauthorized capture, branding, harassment, or death; that a healthy wild free-roaming horse and burro population shall be maintained on the public lands; and that to accomplish this they are to be considered as an integral part of the natural system of the public lands and managed under the principle of multiple use.".

SEC. 2. Section 2 of the Act (16 U.S.C. 1332) is amended as follows:

(1) In paragraph (b), strike out "on" and all that follows through "States;" and insert in lieu thereof the following: "that use public lands as all or part of their habitat, or that have been removed from the public lands by the Secretary but have not lost status under section 3 of this Act;".

(2) In paragraph (c), strike out "amount" and insert in lieu thereof "area".

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(3) In paragraph (d), strike out "stallions and his mares; and" and insert in lieu thereof "bands using the same general area;".

(4) In paragraph (e), strike out the period and insert in lieu thereof a semicolon.

(5) In paragraph (f), strike out "preserve" and all that follows through the period and insert in lieu thereof the following: "maintain the appropriate management level as determined in the planning processes required by section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) and by the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600–1687.); and".

(6) Add at the end thereof the following new paragraph:

"(g) 'band' means a group of wild horses or burros running together or a lone wild horse or burro.".

SEC. 3. Section 3 of the Act (16 U.S.C. 1333) is amended as follows:

(1) Strike out subsection (b)(3), redesignate subsection (b)(2) as subsection (b)(3) and amend subsections (a) and (b)(1) to read as follows:

"(a)(1) All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purpose of management and protection in accordance with the provisions of this Act. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation. The Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands.

"(2) In administering this Act, the Secretary shall consult other Federal agencies, wildlife agencies of the State or States wherein wild free-roaming horses and burros are located, the Advisory Board established in Section 7 of this Act, and other individuals or organizations the Secretary determines have scientific expertise or special knowledge concerning wild horses and burros, wildlife management an animal husbandry, and rangeland management.

"(b)(1) All management activities for each herd area shall be in accordance with the resource management objectives established in land use plans. Such plans and activities shall be designed to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species. Any adjustments in forage allocations on any such lands shall take into consideration the needs of wildlife species which inhabit such lands.

"(b)(2) The Secretary shall maintain a current inventory of wild free-roaming horses and burros on given areas of the public lands. The purpose of such inventory shall be to aid in the determination of whether and where the appropriate management level is being achieved or exceeded, and to obtain biological information on the animals for use in their management."

(2) Subsection (b)(3), as so redesignated by paragraph (1) of this section, is amended as follows:

(A) Strike out "including" and all that follows through the comma following "section".

(B) Strike out "he shall immediately remove excess animals from the range so as to achieve appropriate management levels." and insert in lieu thereof the following: "he shall as soon as practicable remove excess animals from the area to achieve appropriate management levels and to accomplish appropriate herd management.".

(C) Strike out "so as to restore a thriving natural ecological balance to the range, and protect the range" and insert in lieu thereof "to restore a thriving natural ecological balance to the public lands, and protect the public lands".

(D) In subparagraph (B), insert after "and" the last place it appears, the following: "the Secretary shall establish by regulation adoption fees that discourage private maintenance of excess animals for the purpose of commercial gain and maintain a viable adoption program;".

(E) Subparagraph (C), is amended to read as follows:

"(C) After the Secretary has made all reasonable efforts to carry out the provisions of subparagraph (3)(b)(3)(B) and prior to exercising his authorities pursuant to subparagraph (3)(b)(3)(D), the Secretary

shall offer to appropriate animal protection entities (as determined by the Secretary in his discretion), to grant, without cost, title to all unadopted excess wild free-roaming horses and burros. If any such entity or entities accept all or part of such offer the Secretary shall effectuate the grant of title to such entity or entities expeditiously. In the event that the Secretary receives offers to accept title to such animals which exceed the available supply, he shall grant title to such animals, to entities in an equitable manner.".

(F) A new subparagraph (D) is added as follows:

"(D) After the Secretary has carried out his responsibilities, under subparagraphs (3)(b)(3)(B) and (3)(b)(3)(C), he shall cause additional excess wild free-roaming horses and burros for which an adoption or acceptance demand by qualified individuals or entities does not exist to be sold at public auction or destroyed in the most humane, cost efficient manner possible. Provided, that when they are sold or destroyed, they shall become subject to all State and local humane and sanitation laws, and all Federal humane laws other than this Act; provided further, that the Secretary's authority to "sell excess wild and free-roaming horses and burros is expressly limited to 3,500 of such animals in fiscal year 1984; 3,500 in fiscal year 1985; 3,500 in fiscal year 1986; 3,500 in fiscal year 1987; and is terminated and prohibited thereafter.".

(G) Add at the end thereof the following new subparagraph:

"(E) Revenue from the sale or adoption of excess wild free-roaming horses and burros pursuant to this Act shall be deposited with the Treasury in a special account and is hereby authorized to be appropriated and made available to the agency responsible for managing the lands from which the excess animals were removed, for activities associated with the management of wild free-roaming horses and burros including, but not limited to removal, sale, maintenance, habitat improvement, population management and studies for the general welfare of wild free-roaming horses and burros.".

(3) Subsection (c) is amended as follows:

(A) Strike out "adoption and".

(B) Strike out "this Act" and insert in lieu thereof "subparagraph (3)(b)(B)".

(C) Strike out "the" following "and" and all that follows through "care" and insert in lieu thereof "there is no evidence of inhumane care or treatment".

(D) Strike out "upon" following "authorized" and all that follows through "animals" and insert in lieu thereof "to grant title".

(4) Subsection (d) is amended as follows:

(A) In paragraph (1), strike out "pursuant" and all that follows through "(1)" and insert in lieu thereof "upon a grant pursuant to subparagraph (3)(b)(3)(C), at sale pursuant to (3)(b)(3)(D) or pursuant to subsection (3)(c)".

(B) In paragraph (2), strike out "or adoption".

(C) In paragraph (4), strike out "where" and all that follows through "or" and insert in lieu thereof a period.

(D) Strike out paragraph (5), in its entirety.

SEC. 4. Section 7 of the Act (16 U.S.C. 1337) is amended as follows:

(A) Strike out "The" the first place it appears and insert in lieu thereof "Notwithstanding the provisions of any other Act, the".

(B) Strike out "and their management and protection" following "horses and burros" the first place it appears.

(C) Strike out "who are not employees of the Federal or State Governments and" following "persons".

SEC. 5. Subsections 8(1) through 8(6) of the Act (16 U.S.C. 1338) are amended to read as follows:

"SEC. 8. (a) Any person who—

(1) knowingly removes or attempts to remove a wild free-roaming horse or burro from the public lands, without authority from the Secretary;

(2) sells except as specifically provided in section 3(b)(3)(D) of this Act, or converts without authority from the Secretary, to private use;

(3) maliciously causes the death or harassment of any wild free-roaming horse or burro;

(4) except for the Secretary, processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro; or

(5) knowingly violates a regulation issued pursuant to this Act, shall be subject to a fine of not more than $2,000, or imprisonment for not more than one ye., or both. Any person so charged with such violation by the Secretary may be ried and sentenced by any United States commissioner or magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401, title 18, United States Code. Any person who previously has been convicted of a violation of this section shall, upon conviction of a second offense punishable pursuant to this section, be subject to a fine of not more than $10,000, or imprisonment for not more than two years, or both."

SEC. 6. Section 9 of the Act (16 U.S.C. 1338(a)) is amended to read as follows:

"SEC. 9. In administering this Act and any laws pertaining to management of Federal lands, the Secretary or the head of any executive department or agency administering Federal lands may use or contract for the use of helicopters or, for the purpose of transporting captured horses or burros, motor vehicles. Such use shall be undertaken only after public notification and under the direct supervision of a duly authorized official of the department or agency. The provision of subsection (a) of the Act of September 8, 1959 (18 U.S.C. 47(a)), shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary or other agency head.".

SEC. 7. Section 10 of the Act (16 U.S.C. 1339) is amended by striking out "do not presently exist." and inserting in lieu thereof "did not exist on December 15, 1971.".

SEC. 8. Section 11 of the Act (16 U.S.C. 1340) is amended by striking out the first paragraph and inserting in lieu thereof the following:

"SEC. 11. Within 12 months after the enactment of the amendments to this Act, and every 12 calendar months thereafter, the Secretary's of the Interior and Agriculture shall submit to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs a joint report on the administration of this Act as amended. The report shall include an overall assessment of the administration of the Act as amended and provide summary data on the number of animals sold, transferred or adopted; enforcement activities, and costs. The report shall include a recommendation for such legislative actions and other recommendations which the Secretary deems appropriate.".

2. Amend the title so as to read:

A bill to amend the Wild Free-Roaming Horses and Burros Act of 1971.

PURPOSE

The purpose of S. 457, as reported, is to amend the Wild Free-Roaming Horses and Burros Act of 1971 (16 U.S.C. 1331–1340) as amended to accomplish the following:

Recognize that wild horse and burro populations are thriving and not in danger of disappearing.

Recognize that it is the intent of Congress to maintain on public lands administered by the Secretaries of Agriculture and Interior a population of wild horses and burros consistent with the principle of multiple use.

Provide for management of wild horse and burro herds and their habitat in accordance with resource management objectives for the area developed in land use planning.

Require regulatory establishment of adoption fees that both discourage adoption for commercial gain and allow a viable adoption program.

Authorize the limited sale of 3,500 animals for the next 4 fiscal years, in addition to the presently required destruction, of excess animals for which no adoption or acceptance demand by qualified individuals entities exists.

Provide for the conveying of unadoptable excess horses and burros to qualified animal protection entities prior to sale.

Provide the protection of State and local humane laws to excess animals that are sold and no longer protected by the Wild Free-Roaming Horse and Burro Act.

Provide revenue for wild horse and burro management by returning proceeds from the sale of unadopted excess animals to the program.

Eliminate paperwork and the secretarial determination regarding humane conditions, treatment, and care required of qualified adopters prior to obtaining title to their adopted animal(s).

Clarify when wild horses and burros lose their protected status under the Act.

Provide for increased public participation in the development of regulations and policies concerning wild horse and burro management by re-establishing an advisory board.

Clarify the language in the Act authorizing prosecution of individuals who illegally capture, sell, or process into commercial products any wild horse or burro.

Deter individuals from illegal capture, sale, inhumane treatment or care, and other violations of the regulations by increasing the penalty for conviction of a second offense.

Authorize humane and supervised use of helicopters and motor vehicles to remove horses and burros from lands under the administration of other Federal agencies.

Improve the cost-effectiveness of the program and reduce compliance and titling costs.

Background and Need

Public concern over the inhumane treatment of wild horses and burros developed during the 1950's. Mustanging had become a profitable business as the pet food industry grew in the 1930's and 1940's, and little concern was felt by the mustangers over humane treatment of the animals as they were captured and transported to slaughterhouses. Through a campaign for protective legislation led by Mrs. Velma "Wild Horse Annie" Johnston of Reno, Nevada, the American public gradually became aware of the plight of these animals. In 1959 Congress enacted Public Law 86–234 prohibiting the use of aircraft or motor vehicles and the pollution of watering holes for capturing or killing wild horses and burros on public lands. Continued efforts by Mrs. Johnston, concerned private organizations, and thousands of schoolchildren culminated in passage of Public Law 92–195, commonly referred to as the Wild Free-Roaming Horses and Burros Act of 1971.

The Act provides for the protection, management, and control of wild horses and burros on public lands administered by the Department of the Interior's Bureau of Land Management and the Department of Agriculture's Forest Service. These animals are termed "living symbols of the historic and pioneer spirit of the West," and are to be considered "as an integral part of the natural system of the public lands." The protection provided by the Act led to increasing herds across the Western States. To protect the rangeland resources and pre-

serve multiple use of the public lands, the law requires the immediate removal of excess wild horses and burros.

Amendments to the law in 1976 and 1978 authorized humane use of helicopters and motor vehicles in removal operations, and established a priority for disposing of excess animals. First, old, sick, or lame animals must be humanely destroyed. Healthy excess animals are to be made available for private maintenance (adoption) as long as an adoption demand by qualified individuals exists. If additional excess animals exist for which foster homes cannot be found, Public Law 92–195 requires their destruction.

Since passage of the Wild Free-Roaming Horse and Burro Act, BLM has spent more than $33 million on the wild horse and burro program. Expenditures in recent years are:

Fiscal year:		
	1979	$4, 250, 000
	1980	6, 244, 300
	1981	7, 060, 000
	1982	5, 108, 000
	1983	4, 812, 000

Current population estimates indicate approximately 56,800 wild horses and burros roam the public lands under BLM's jurisdiction in 10 Western States. Although multiple-use planning to determine appropriate wild horse and burro population levels is not yet complete in many areas, BLM estimates approximately 25,000 wild horses and burros will be managed on pubic lands. Approximately 6,000 excess animals were removed from the public rangelands in fiscal year 1983.

More than 42,000 wild horses and burros have been placed in private maintenance through the Adopt-A-Horse Program since its spread nationwide in 1976. An adoption fee policy implemented on January 2, 1982, raised the fee for a wild horse to $200; for a wild burro, $75. If the animal was transported from the center where it was prepared for adoption to another adoption facility, transportation costs were added to the fee. The purpose of this fee was to reduce the Federal Government's subsidy of the adoption program in response to recommendations made by the Office of Management and Budget and a House of Representatives Interior and Insular Affairs Subcommittee. The adoption fee increase reduced the number of individuals who were willing and able to adopt a wild horse or burro.

In response to an analysis of fiscal year 1982 program costs and to public comments on proposed regulation formally establishing the $200 per horse, $75 per burro fee levels, BLM published final regulations on March 4, 1983, lowering wild horse adoption fees to $125 per animal, and maintaining burro fees at $75 per animal. Transportation costs, if applicable, are added to these fees. BLM anticipates an increased ability to place healthy excess wild horses in private maintenance in a timely manner as a result of the lower adoption fee, while still reducing Adopt-A-Horse Program subsidies and discouraging adoption for the purpose of commercial gain.

In October of 1983, over 1,500 excess wild horses and burros remained at BLM's various adoption centers, and costs of maintaining these animals were increasing. Funds set aside for the removal of excess animals were being spent to provide fee and car for unadopted wild horses and burros.

Wild horse and burro management emphasis up to this point has been on the reduction of animals in areas where seriously deteriorated range conditions exist. Removal of excess animals remains a high priority in many areas, but in those areas where population levels equal management levels, BLM is shifting emphasis to on-the-ground management of herds.

Herd management area plans are being developed to implement multiple-use management objectives for each area where wild horses and burros are to be maintained. The plans detail range condition, current population levels, age and sex ratios, watering facilities, and forage available for the herd. The plans may identify specific improvements and facilities required to enhance range resource use by BLM's multiple-use planning system, public participation plays a vital role in wild horse and burro management.

Congress mandated a research study regarding wild horses and burros in Sec. 14(a) of the Public Rangelands Improvement Act (PRIA). A contract between the National Academy of Sciences (NAS) and the DOI was signed in 1979. Sec. 14(a) of PRIA directed the President of NAS to impanel a NAS committee to outline a research study that would further knowledge ". . . of wild horse and burro population dynamics and their interrelationship with wildlife, forage and water resources, and assist the Secretary in making a determination as to what constitutes excess animals". The Contract specified that the NAS Committee proceed in three phases: I. review existing knowledge on wild horses and burros and design a research program; II. evaluate wild horse and burro research contracted by BLM, and III. submit a final report recommending management programs for wild horses and burros.

In December, 1980, the NAS committee completed Phase I by issuing a 382 page report. During Phase II, the NAS evaluated 5 discrete research projects, a small fraction of the program recommended in Phase I. The report transmitted to the Congress in January, 1983 completes Phase III.

The Wild Free-Roaming Horses and Burros Act of 1971 applies to those lands administered by the Secretary of the Interior through the Bureau of Land Management (BLM) and the Secretary of Agriculture through the Forest Service (FS), where wild horse and burros existed at the time the act was passed.

The Forest Service objective is to manage wild free-roaming horses and burros in those areas where they existed in 1971 when the Wild Free-Roaming Horse and Burro Act was passed. Population levels are based on their forage and habitat requirements, wildlife, permitted livestock and other uses recognized under the Multiple Use-Sustained Yield Act. Excess animals are to be removed.

The Forest Service has 53 wild horse and burro territories of which 30 have management plans. Several Forest Service territories (30 plus) are joint territories with the BLM.

Population numbers on territories vary from 0 to 150-plus percent of management planning levels. The Forest Service currently reporting a total of 2,050 horses and 50 burros. These figures are compared to management planning levels of 1,350 for horses and 140 for burros. There are approximately 57,000 horses and burros on public lands, 95 percent on BLM and 5 percent on National Forests.

Eighty-plus percent of Forest Service excess animals are captured and processed for adoption in cooperation with BLM. This cooperation includes use of BLM round-up crews, corral facilities, and the Adopt-A-Horse Program. It continues to be an efficient way for the Forest Service to place excess wild horses and burros into adoption. The remaining 20 percent are adopted in local areas by Forest Service personnel, with the same fee levels and requirements as used by the BLM.

Fiscal year 1983 plans call for removing 615 excess animals from Forest Service lands. Tentative plans call for the removal of 400 animals during fiscal year 1984.

Legislative History

S. 457 was introduced on February 3, 1983. A field hearing was held in Rock Springs, Wyoming on March 19, 1983 by the Public Lands and Reserved Water Subcommittee. A hearing was held in Washington, D.C. on April 11, 1983 by the Public Lands and Reserved Water Subcommittee. The Administration supports the enactment of S. 457 if amended. In an open business session on October 28, 1983, the Senate Committee on Energy and Natural Resources ordered S. 457 favorably reported with an amendment.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources in open business session on October 28, 1983, by majority vote of a quorum present recommends that the Senate pass S. 457 if amended, as described herein.

The rollcall vote on reporting the measure was 10 yeas, 9 nays as follows:

YEAS	NAYS
McClure	Weicker [1]
Hatfield [1]	Warner
Domenici	Bumpers [1]
Wallop	Ford
Murkowski	Metzenbaum [1]
Nickles	Matsunaga [1]
Hecht	Melcher
Chafee	Tsongas [1]
Heinz	Bradley
Evans [1]	

[1] Indicates voted by proxy.

Committee Amendments

The committee adopted an amendment in the nature of a substitute to S. 457 as introduced.

The substitute amends S. 457 as introduced, by directly amending the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340), instead of superseding such Act as implied in S. 457. The intent of the existing law is preserved insofar as it is not affected by this amendment.

The amendment would make the following changes in the Act of December 15, 1971, as amended, which were not included in S. 457 as introduced:

Section 2(f) would be modified to make the definition of "excess animals" consistent with the changes made in section 3(a) which requires management activities be in accordance with resources objectives established in land use plans as required by section 202 of the Federal Land Policy and Management Act of 1976 and by the Forest and Rangeland Renewable Resources Planning Act of 1974.

Section 3(a) would be amended to consolidate the consultation requirements that are scattered throughout the section and to identify a single grouping of individuals that would have to be consulted by the Secretary.

Section 3(b) would be amended to conform to amendments to sections 2(f) and 3(a) which require all management activities be in accordance with the resource management objectives established in land use plans of the BLM and Forest Service.

Section 3(b)(2) would be amended to conform with the amendments to sections 2(f) and 3(a). In addition, the amendment modifies the purpose of the required inventory of wild horses and burros to reflect its relative role in the determination of over or under population. Section 3(b)(2) would be renumbered to become section 3(b)(3).

A new section 3(b)(3)(C) would be added which directs the Secretary of the Interior to offer unadoptable, excess wild horses and burros to qualified groups prior to sale. The Secretary would have complete discretion to screen the groups receiving horses and burros for their ability to provide proper care and distribution.

The Committee intends that in using the authority granted by this subsection, that the Secretary ensure that the adoption program is not interfered with or diminished in any way. The adoption program is to remain the primary tool for transferring ownership of animals removed from the range and should be aggressively pursued.

The Committee intends that there will be no cost (including transportation costs) to the qualified groups for the animals transferred under this subsection.

The Committee does not view the waiving of these costs as a subsidy. The cost of feeding and maintaining these animals over long periods of time, which otherwise would be incurred by the Federal Government, will be saved.

The Committee intends that the animal protection groups who accept these animals maintain or humanely dispose of these animals. The animals may not be returned to the public lands. If the Secretary concludes that such action is being taken by any group, the Committee intends that such group be ineligible for any further transfers under this subsection.

A new section 3(b)(3)(D) would be added which limits the number of animals that can be sold by the Secretary to 3,500 animals per fiscal year for fiscal years 1984, 1985, 1986 and 1987. Sale authority is terminated after fiscal year 1987.

Both S. 457, as introduced and as reported, deleted the reference to the congressional mandated study in section 3(b)(3) of the Act of December 15, 1971.

The Committee notes that this reference is deleted in recognition of the fact that those portions of the NAS study which were funded have been completed and made available to the Congress. The study is now part of the body of information that is available and the Committee expects that the Departments will avail themselves of, and give due consideration to, the study.

Section 3(c) would be amended by deleting the words "adoption and". The words "adoption" and private maintenance are redundant. Use of the term "private maintenance" is consistent elsewhere in S. 457 as reported. The words "or adoption" would be deleted in section 3(d)(2) for the same reason.

Section 7 would be amended to delete the words "and their management and protection". The deletion ensures that the advisory board may advise the Secretary on any matter relating to the wild horse and burro program.

Section 8(a)(2) would be modified to clarify that any person who sells, except as specifically authorized in new subsection 3(b)(3)(D), or converts without authority from the Secretary, a wild horse or burro to private use, is subject to the penalties provided in this section.

Section 8(a)(4) would be clarified to ensure that the Secretary is not subject to a penalty under the Act for processing or permitting the processing of wild horses or burros for commercial products. The Committee intends that only the remains of old, sick or lame animals which die or are destroyed, or animals sold pursuant to subsection 3(6)(3)(D) would be processed or permitted to be processed for commercial products.

Section 10 would be amended to restrict the Secretary in relocating horses and burros to areas in which they were located in 1971, the date when the Act was passed.

Section 11 would be amended by inserting a new paragraph at the beginning of the section which requires the Secretaries of the Interior and Agriculture to provide additional information in the joint annual report submitted to appropriate Committees of Congress.

Section-by-Section Analysis

Section 1 of S. 457 as reported makes Congressional findings. The Congressional finding in the original Act that wild free-roaming horses and burro populations are in danger of disappearing was deleted. A Congressional policy was adopted that a healthy wild free-roaming horse and burro population shall be maintained on public lands and is to be managed under the principle of multiple-use.

Section 2 of S. 457 as reported provides for changes in the definition of terms. The definition of "wild free-roaming horses and burros" is expanded to insure that animals are protected under the Act until such time as they lose their status as wild horses and burros.

Section 3(1) of S. 457 as reported amends section 3(a) of the original Act to consolidate the consultation requirements.

It also amends and redesignates the last two sentences of section 3(a) of the original Act to require that the management of wild free-roaming horses and burros be in accordance with the resource

management objectives established in land use plans. At present, such management is required to be "at the minimum feasible level."

This section also redesignates and amends section 3(b)(1) of the original Act to modify the purpose of a required inventory of animals to determine management levels and biological information.

Section 3(2)(A)–(C) of S. 457 as reported amends section 3(b)(2) of the original Act. The research study mandated by section 3(b)(3) of the original Act has been completed. The Committee expects the Secretary to use the results in the study in making his determination under this section. Additional changes also reflect a balance between the need for taking action to remove excess animals as soon as possible and the practical need for occasional delay due to personnel and budgetary constraints. The word "range" is replaced with the word "areas" throughout and the defined term public lands is inserted where appropriate and is used consistently.

Section 3(2)(D) amends section 3(b)(2)(B) of the original Act which currently requires the Secretary to establish a wild horse and burro adoption program, is amended to require the Secretary to maintain a viable adoption program and to establish, by regulation, adoption fees that discourage private maintenance of animals for commercial gain.

Section 3(2)(E) of S. 457 as reported amends section 3(b)(2)(C) of the original Act by deleting the subparagraph and replacing it with a provision that directs the Secretary to offer, prior to sale, all excess, unadopted animals to those animal protection groups that the Secretary deems are qualified to provide care, distribution and maintenance for such animals. The Secretary is to provide title at no cost.

Section 3(2)(F) of S. 457 as reported adds a new subparagraph (D) to section 3(b)(3) of the original Act. The Secretary is given limited sale authority. The Secretary's sale authority is expressly limited to 3,500 animals per fiscal year for fiscal years 1984 through 1987, and is terminated thereafter.

Section 3(2)(G) of S. 457 as reported adds a new subparagraph (E) to section 3(b)(3) of the original Act, which requires that revenues received from the sale or adoption of excess animals be returned to the agency from whose lands the animals were removed, as reimbursement for costs related to the wild horse and burro program.

Section 3(3) of S. 457 as reported amends Section 3(c) of the original Act which provides that individuals with whom animals have been placed for adoption may be granted title to such animals upon application by the individual and a determination by the Secretary that such individual has provided humane conditions, treatment and care for such animals. In S. 457 as reported the section is amended to delete the requirement for both the application and the determination. The Secretary is authorized to grant title to individuals where, after a 1-year period, there is no evidence of inhumane care or treatment of such animals. This shift in responsibility should not be viewed as in any way encouraging or condoning the inhumane treatment of horses. In fact, other amendments approved by the Committee increase the penalties for those who are found guilty of mistreating these animals. Instead, these charges reflect the need to reduce an administrative bur-

den on the Secretary necessitated by monitoring each and every adoption.

Section 3(4) of S. 457 as reported amends section 3(d) of the original Act. The amendment clarifies when animals lose their protected statutes under the Act. Several conforming amendments are made.

Section 4 of S. 457 as reported amends section 7 of original Act to direct the Secretaries of the Interior and Agriculture to appoint, without regard to any other Act, a joint advisory board to advise them on any matter relating to wild free-roaming horses and burros. The section would also be amended to delete the present provision prohibiting Federal or State Government employees from serving on the advisory board.

Section 5 of S. 457 as reported amends and redesignates subsection 8(1)–(6) of the original Act to provide for a fine of not more than $2,000, or imprisonment for not more than 1 year or both, for certain specified abuses of wild horses and burros and for violations of regulations issued pursuant to the 1971 Act, as amended. S. 457 would amend section 8(a) by adding penalties for second violations: a fine of not more than $10,000, or imprisonment for not more than 2 years, or both.

In addition, section 8(a) is amended to change the basis for penalties from "willfully" removing a horse or burro from the public lands to "knowingly" doing so. The same change in standard would be made for the conversion of a wild horse or burro to private use.

Section 8(a)(2) is also modified to clarify that any person who sells, except as specifically authorized in new subsection 3(b)(3)(D), or converts without authority from the Secretary, a wild horse or burro to private use, is subject to the penalties provided in this section. This amendment also clarifies in section 8(a)(4) that the Secretary is not subject to a penalty under the Act for processing or permitting the processing of wild horses or burros for commercial products. The Committee intends that only the remains of old, sick or lame animals which die or are destroyed, or animals sold pursuant to subsection 3(6)(3)(D) would be processed or permitted to be procesed for commercial products.

Section 6 of S. 457 as reported amends section 9 of the original Act. Section 9 in the original Act authorizes the Secretaries of Agriculture and the Interior, in administering the Act, to use or contract for the use of helicopters and motor vehicles. Such authority is also extended to the head of any Executive department or agency administering Federal lands. Section 9 is also amended to delete the present requirement that public hearings be held prior to the use of helicopters and motor vehicles and would require instead that there be public notification before their use.

Section 7 of S. 457 as reported amends section 10 of the original Act to ensure that the Secretary remains restricted in relocating animals to areas in which they were located in 1971.

Section 8 of S. 457 as reported amends section 11 of the original Act to require the Secretaries of the Interior and Agriculture to provide additional information in the joint annual report submitted to appropriate congressional committees.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., November 4, 1983.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 457, a bill to require the protection, management, and control of wild free-roaming horses and burros on public lands, as ordered reported by the Senate Committee on Energy and Natural Resources, October 27, 1983.

The bill would increase the options available to the Secretary of the Interior for managing excess horses and burros under Public Law 92–195, the Wild Free-Roaming Horses and Burros Act. Under current law, when public lands are overpopulated with wild horses and burros, the Secretary is directed to remove the animals, arrange for their adoption, and destroy those animals not adopted. Sale of the animals or their remains for processing into commercial products is prohibited.

S. 457 directs the Secretary, after failing to arrange for their adoption, to offer excess animals to animal protection agencies. Those animals not adopted or given to humane societies would be either sold at public auction or destroyed. The authority to sell is limited to 3,500 animals per year and is effective only for fiscal years 1984 through 1987.

Based on information from the Bureau of Land Management, it is estimated that the sale of 3,500 animals annually would bring in receipts of about $0.7 million, with additional costs related to the sales of about $0.2 million. The bill authorizes the appropriation of sales income for activities associated with management of the animals.

Enactment of this bill would not affect the budgets and State and local governments.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Rudolph G. Penner, *Director.*

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be increased in carrying out S. 457 as reported. S. 457 would amend the Wild Free-Roaming Horses and Burros Act of 1971. The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 457 as reported.

Executive Communications

The pertinent legislative reports received by the Committee from the Department of the Interior setting forth Executive Agency recommendations relating to S. 457 are set forth below:

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., May 2, 1983.

Hno. James A. McClure,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This responds to your request for our views on S. 457, a bill, "To require the protection, management, and control of wild free-roaming horses and burros on public lands."

We support the enactment of S. 457, with the enclosed clarifying and technical amendments.

S. 457 would reenact the Act of December 15, 1971 (16 U.S.C. 1331 et seq.), commonly referred to as the Wild Horse and Burro Act of 1971, with several significant amendments as follows:

1. It would remove the Congressional finding in the first section of the original Act that wild free-roaming horse and burro populations are in danger of disappearing, and it would establish, as a policy of Congress, that such animals are to be managed under the principle of multiple use.

2. Section 3(a) of the original Act would be amended to require that the management of wild free-roaming horses and burros be in accordance with the resource management objectives established in land use plans. At present, such management is required to be "at the minimum feasible level."

3. Section 3(b)(2)(B), which currently requires the Secretary to establish a wild horse and burro adoption program, would be amended to require the Secretary to maintain a viable adoption program and to establish, by regulation, adoption fees that discourage private maintenance of animals for commercial gain.

4. Section 3(b)(2)(C), which presently authorizes the destruction of unadoptable animals, would be amended to allow such animals to be sold at public auction, and to provide that when animals are sold or destroyed they become subject to all State and local humane and sanitation laws and all other Federal laws.

5. Section 3(b)(2) would also be amended by adding a new paragraph (D), which would require that revenues received from the sale or adoption of excess animals be returned to the agency whose lands the animals were removed, as reimbursement for costs related to the wild horse and burro program.

6. Section 3(c) presently provides that individuals with whom animals have been placed for adoption may be granted title to such animals upon application by the individual and a determination by the Secretary that such individual has provided humane conditions, treatment and care for such animals. The section would be amended to delete the requirement for both the application and the determination. The Secretary would be authorized to grant title to individuals where, after a one-year period, there is no evidence of inhumane care or treatment of such animals.

7. Section 7 would be amended to direct the Secretaries of the Interior and Agriculture to appoint, without regard to any other Act, a joint advisory board to advise them on any matter relating to wild free-roaming horses and burros. The section would also be amended to delete the present provision prohibiting Federal or State government employees from serving on the advisory board.

8. Section 8 now provides for a fine of not more than $2,000, or imprisonment for not more than one year or both, for certain specified abuses of wild horses and burros and for violations or regulations issued puruant to the 1971 Act. S. 457 would amend section 8(a) by adding penalties for second violations: a fine of not more than $10,000, or imprisonment for not more than two years, or both.

In addition, section 8(a) would be amended to change the basis for penalties from "willfully" removing a horse or burro from the public lands to "knowingly" doing so. The same change in standard would be made for the conversion of a wild horse or burro to private use. Finally, section 8(a)(4), which prohibits the processing of the remains of wild free-roaming horses or burros into commercial products, would be modified to prohibit such actions only where they are undertaken without authority from the Secretary.

9. Section 9 presently authorizes the Secretaries of Agriculture and the Interior, in administering the Act, to use or contract for the use of helicopters and motor vehicles. The section would be amended to extend such authority to the head of any Executive department or agency administering Federal lands. Section 9 would also be amended to delete the present requirement that public hearings be held prior to the use of helicopters and motor vehicles and would require instead that there be public notification before their use.

10. Section 11, which requires biennial reports to Congress on the administration of the Act, would be eliminated.

During the past 12 years, the Bureau of Land Management has administered a rapidly changing wild horse and burro management program. Their experience has convinced us that the administering agencies need new authorities to carry out the mandate to protect, manage, and control wild free-roaming horses and burros on public lands in the most beneficial manner.

The original Wild Horse and Burro Act of 1971 was passed in respones to a public outcry for protection and preservation of the animals from the inhumane treatment they had experienced at the hands of mustangers. Although it provided in general terms for the removal and disposition of excess animals, it emphasized the protection of wild horses and burros.

The 1971 Act set the tone for the initiation of a wild horse and burro management program by the Bureau of Land Management and the Forest Service. However, little attention was given to the problems that would result from protecting two species of animals that are both capable of rapid reproduction and have few natural predators to limit their population growth.

By 1973, it became clear that wild horses and burros were no longer in danger of disappearing from the public lands. Removal of excess animals was becoming more commonplace. That year, the Adopt-A-Horse Program was begun. Because the Act of September 8, 1959 (73 Stat. 410; 18 U.S.C. 47), popularly known as the Wild Horse Annie Act, prohibited the use of aircraft and motor vehicles in wild horse and burro roundups, removals were accomplished by wranglers on horseback. The work was dangerous, slow, and very costly. The need for removing additional animalse kept escalating. According to 1974 population estimates, the number of wild horses and burros had increased from the 1971 level of 17,000 animals to about 57,000.

In recognition of the need for additional authority to conduct humane removal of excess animals, section 404 of the Federal Land Policy and Management Act of 1976 (16 U.S.C. 1338(a)), amended the Wild Horse and Burro Act of 1971 to authorize BLM and the Forest Service to use helicopters in gathering operations and to use motor vehicles to transport captured animals. Such use of helicopters and motor vehicles increased the safety of all parties involved in animal removal, and resulted in more humane gathering procedures and more cost-effective operations.

The increased efficiency of the new gathering methods resulted in an increase in the number of captured animals. Congress recognized the problem and, in the Public Rangelands Improvement Act of 1978 (92 Stat. 1803), amended the 1971 Act by creating priorities for the removal and disposition of excess wild horses and burros. The law now requires that old, sick, or lame animals are the first to be destroyed humanely. Healthy excess animals are to be made available for private maintenance as long as an adoption demand by qualified individuals exists. If no such demand exists, remaining excess animals are to be destroyed in the most humane and cost-efficient manner possible.

Congress also recognized that not enough information regarding wild horses and burros was available to adequately manage them. It authorized a research program to be designed by the National Academy of Sciences and completed under its auspices by January 1983. Recognizing the need to provide new incentives for adoption and at the same time to reduce program costs, Congress authorized granting title for wild horses and burros to individuals who had provided at least one year of humane care and proper treatment for the animals.

Costs of operating the program are still too high, and cost efficiency must be improved. The current provisions of the 1971 Act prevent BLM from initiating many cost-saving measures. We believe that the changes in the law that would be accomplished by S. 457 would enable us to more effectively manage wild horses and burros.

The major change from the current law that would be made by S. 457 is that BLM and the Forest Service would be given the authority

to sell unadoptable excess animals. This would be in addition to the present authority to destroy them. Even with this sale authority, however, the adoption program will remain BLM's primary means of disposing of excess animals. Authority to sell unadoptable animals will provide another opportunity to find a home for the animals and, at the same time, will generate additional revenues for the program.

Other provisions in S. 457 will contribute to the cost-effectiveness of the wild horse and burro program. The revision of section 3(c) would eliminate the need to file an application for title and would allow BLM to issue certificates of title to all adopters who have maintained the animal for at least one year, unless there is evidence that the animal has not received humane care and proper treatment. This would also remove a burden from adopters who currently must complete an application and obtain a certification from a veterinarian that the animal has been properly maintained. There are presently 22,800 animals that have been adopted from BLM that are eligible for transfer of title to the adopters. Costs associated with both compliance checks and titling would be reduced under this provision of S. 457.

Helicopters and motor vehicles have been used in wild horse and burro removal operations for seven years, and their use has proven to be humane and cost-efficient. However, the public hearings that are required before they can be used are not well attended and serve little useful purpose. Elimination of the requirement in section 9 of the present law for a hearing would substantially benefit BLM. The bill continues to require public notification of any upcoming use of helicopters.

In addition, a provision authorizing other Federal agencies to use helicopters and motor vehicles in horse and burro gathering operations has been added in S. 457. This will assure that the most humane method of treating the animals is uniformly utilized.

The biennial report to Congress required by section 11 of the 1971 Act duplicates material that is included in the annual report to Congress required by section 311 of the Federal Land Policy and Management Act of 1976. Additional cost savings would be realized by eliminating the requirement to submit to Congress a separate report on wild horse and burro administration.

The joint advisory board on the management and protection of wild free-roaming horses and burros, which was established in accordance with the requirements of section 7 of the 1971 Act, was abolished pursuant to section 14 of the Federal Advisory Committee Act (5 U.S.C., App. 1, 14). S. 457 would direct the Secretary to reestablish a wild horse and burro advisory committee. This would provide additional opportunity for public participation in the development of programs and procedures to implement the amendments to the law. This may reduce some of the misunderstanding about this program.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

FRANK A. DUBOIS,
Deputy Assistant Secretary.

DEPARTMENT OF THE INTERIOR PROPOSED AMENDMENTS TO S. 457

1. On page 3, strike out lines 11 and 12 and insert in lieu thereof "maintain the appropriate management level; and".

This amendment would modify the definition of "excess animals" to make it consistent with the provision of section 3(a) that requires management activities to be in accordance with resource objectives established in land use plans.

2. On page 3, beginning on line 22, strike out the comma and all that follows through "desirable" on line 25.

On page 4, beginning on line 3, strike out "He" and all that follows through line 7 and insert in lieu thereof the following:

"In administering this Act, the Secretary shall consult with appropriate other Federal agencies, wildlife agencies of the States wherein wild free-roaming horses and burros are located, the Advisory Board established in section 7 of this Act, and other individuals or organizations the Secretary determines have scientific expertise or special knowledge concerning wild horses and burros, wildlife management and animal husbandry, and rangeland management."

"(b) (1) All"

On page 4, line 8, insert "for each herd area" immediately after "activities".

On page 4, line 9, strike out "for the area".

On page 4, beginning on line 10, strike out "carried" and all that follows through "order" on line 12 and insert in lieu thereof "designed".

On page 4, strike out line 17 and all that follows through page 5, line 10 and insert in lieu thereof the following:

"(b) (2) The Secretary shall maintain a current inventory of wild free-roaming horses and burros on given areas of the public lands. The purpose of such inventory shall be to aid in the determination of whether and where the appropriate management level is being achieved or exceeded, and to obtain biological information on the animals for use in their management."

On page 5, line 11, strike out "(2)" and insert in lieu thereof "(3)".

The proposed changes would consolidate the consultation requirements that are scattered throughout the section, and limit them to a single grouping that would have to be consulted by the Secretary. The bill presently requires the Secretary to consult with several groups whose composition vary slightly.

In addition, the proposed changes would modify the purpose of the wild free-roaming horse and burro inventory to more correctly reflect its relative role in the determination of whether there is overpopulation as well as clarify the uses of inventory data.

3. On page 5, line 23, strike out "immediately" and insert in lieu thereof "as soon as practicable".

This amendment reflects a balance between the need for taking action to remove excess animals as soon as possible and the occasional need for delay because of manpower or budgetary constraints.

4. On page 5, line 24, strike out "range so as" and insert in lieu thereof "area".

Replacing the word "range", which identifies specifically designated areas rather than herd areas, with "area", is consistent with an earlier reference to "area" in the same sentence and avoids confusion among the terms "area", "herd area", and "range".

5. On page 6, line 2, strike out "so as".

This is an editorial change.

6. On page 6, lines 3 and 4, strike out "range" each place it appears and insert in lieu thereof "public lands".

The word "range" would be removed to eliminate any confusion with the term "herd areas" (see amendment #5). Use of the term "public lands" is consistent with its use throughout the bill.

7. On page 7, lines 6 and 7, strike out "the excess wild free-roaming horses and burros" and insert in lieu thereof "they".

This is an editorial change.

8. On page 7, line 15, strike out "private".

The proposed deletion will clarify that all maintenance costs are reimbursable from sale or adoption revenues.

9. On page 7, line 19, strike out "adoption and".

On page 8, line 6, strike out "or adoption".

The words "adoption" and "private maintenance" are redundant. Use of the term "private maintenance" would be consistent with its use elsewhere in the bill (e.g., page 6, lines 11 and 12).

10. On page 8, lines 11 and 12, strike out "and disposal is authorized by the Secretary".

The phrase proposed for deletion appears to require Secretarial approval for disposal of free-roaming animals on public lands or adjacent private lands while not requiring approval for animals in private maintenance (see page 8, lines 5–7). Animals that die of natural causes, regardless of their location, should immediately lose their status.

11. On page 9, lines 17 and 18, strike out "and their management and protection."

The phrase proposed for deletion appears to limit the advisory board's ability to make recommendations on BLM's management program protection and activities. The board should be able to advise on any matter relating to wild horses and burros, as the section provides. The phrase in question could be confusing and is unnecessary.

12. On page 12, lines 5 and 6, strike out "do not presently exist" and insert in lieu thereof "did not exist at the date of the enactment of the Act of December 15, 1971 (16 U.S.C. 1381 et seq.)".

As now written, section 10 would expand the area to which horses and burros could be relocated from areas where they were located in 1971 to areas where they may be located in 1983 or whenever S. 457 is enacted. This was not the intention of section 12 and would, in fact, be counterproductive.

13. On page 12, add the following new section:

"SEC. 12. The Act of December 15, 1971 (16 U.S.C. 1331 et seq.), is repealed."

This new section is required because S. 457 is intended to supersede and replace the original Wild Horse and Burro Act.

ADDITIONAL VIEWS OF SENATOR HATFIELD

In 1971 Congress enacted a law directing the Bureau of Land Management and the U.S. Forest Service to take steps to protect wild free-roaming horses and burros on public lands. I was an original cosponsor of that bill and as such have maintained a continuing interest in assessing the progress and impact of that legislation.

While the 1971 bill provided the managing agencies with the authority to manage animals "in a manner that is designed to achieve and maintain a thriving natural econological balance on the public lands," and allowed for the humane disposal of excess numbers of animals, there have been widespread reports that the wild horse and burro population has increased dramatically in recent years. This can have a serious impact on the range forage and other wildlife. In addition, the BLM has been under criticism for their management of the Wild Horse and Burro program, particularly the adoption process.

In response to these problems, S. 457 was introduced by Senator McClure, Chairman of the Senate Energy and Natural Resources Committee, to streamline the adoption process, as well as impose a sales authorization provision which would allow for the sale of those horses and burros remaining after completion of the adoption process. Concern over the imposition of such a provision was expressed by both individuals and animal protection groups.

In recognition of those concerns, I joined with Senator Wallop in attaching an amendment to S. 457 which imposes the following limitations on the sales authorization granted in the bill:

Directs the Secretary of the Interior to offer the unadoptable excess wild horses and burros to qualified animal protection groups prior to sale.

Applies a limit of 3,500 as the number of anmials that can be sold for the next 3 fiscal years. Program would have to be reauthorized thereafter.

Requires Secretaries of the Interior and Agriculture to file an annual report on the program with the appropriate committees.

This amendment, I feel, best addresses those concerns expressed by individuals and groups on both sides of the issue. Certainly the Bureau of Land Management must handle all aspects of the program in a humane and efficient manner, while at the same time striking a balance between the competing uses of the public rangleand resource. It is my hope that the approach outlined will strike that necessary balance.

MARK O. HATFIELD.

ADDITIONAL VIEWS OF SENATOR HECHT

I voted in support of S. 457, as amended, because I believe it represents a constructive step towards the better management and humane disposal of excess horses and burros on the public rangelands.

With an estimated total of 27,000 wild horses and burros on its public lands, my home State of Nevada has seen these once-threatened animals become a major menace to livestock, wildlife, and even themselves because of overpopulation. The Bureau of Land Management recommends the removal of roughly one-half of Nevada's wild horses and burros in order to achieve the balanced public land management objectives that are required under Federal law.

Over the years, the primary method for disposing of excess horses and burros has been the Adopt-A-Horse Program. Though successfull, this program has not been able to keep pace with the growing number of excess animals removed from the rangelands, and today the Bureau of Land Management and Forest Service must spend a disproportionate amount of staff and financial resources caring for the large number of unadoptable horses held in Government corrals. The Government currently spends $400 per year for the maintenance of each unadoptable animal.

Clearly, there is a pressing need for additional disposal methods for unadoptable horses and burros. S. 457 meets this need by requiring the Secretary of the Interior to offer excess, unadoptable animals to qualified private groups, free of charge, for additional care and distribution. Failing this, the Secretary is then authorized to sell up to 3,500 animals per year for the next 3 years at public auction.

I have mixed feelings about this last provision, the Secretary's limited sale authority for unadoptable horses and burros. Surely, it is this Senator's expectation that the Government will exercise this sale authority only as a means of absolute last resort. It is also my hope that the mere existence of such sale authority will serve as an incentive for people to make full use of the first two disposal options—adoption and free transfer. Since Nevada currently holds the largest number of excess, unadoptable horses and burros, I intend to do all that I can to encourage these programs and to see that the sale authority, if enacted, is ultimately not needed as a management tool.

CHIC HECHT.

MINORITY VIEWS OF SENATOR FORD

The Wild, Free-Roaming Horses and Burros Act, Public Law No. 92–195, gives very broad discretion to the Secretaries of Agriculture and the Interior to manage wild horses and burros on the Federal public lands. S. 457 would endow the Secretaries with even greater, and to my mind, unnecessary, powers. Because I believe that S. 457 is the wrong solution to a "problem" that is not nearly as serious as the proponents of the legislation claim, I am opposed to its enactment.

S. 457 is premised on the assumption that the current population of wild, free-roaming horses and burros is greatly in excess of the capacity of the public lands to support them. The Interior Department estimates that there are nearly 32,000 "excess" horses and burros out of a population of 56,800—56 percent of the total. It is said that these excess animals are causing serious damage to the public lands, competing with domestic livestock licenses to graze on Federal ranges, and harming wildlife and its habitat.

To facilitate removal of horses and burros from the public lands, S. 457 authorizes the Secretaries to sell up to 3,500 animals at auction during each of the next 4 fiscal years. Under this bill, as reported, the Secretary would therefore be authorized to sell 14,000 animals between now and September 30, 1986. These sales will supplement the existing Adopt-A-Horse Program, which proponents of the bill claim is inadequate to dispose of the numbers of animals expected to be removed. It is generally conceded that the animals to be sold will be the "unadoptables"—animals which, by reason of age, temperament or physical condition are not attractive to potential adopters.

It is also generally understood that nearly all of the animals to be sold at auction will have little value except as slaughter stock. Therefore, S. 457 represents a fundamental departure from the purposes of the Wild Horse Act, which was passed to protect the animals as an integral part of the public rangeland environment. Prior to 1971 "mustangers" had done exactly what S. 457 would now have the Federal Government do: round up wild horses to sell for pet food.

So drastic a change in legislative purpose should be based on a compelling need. However, the proponents of S. 457 have not made such a showing. Despite the often-repeated assertions that wild horses and burros cause serious damage to the public rangelands, the facts seem to be at odds with what has been claimed.

Controversy over the degree of damage being caused to the public lands by wild horses and burros is not new. When the Wild Horse Act was last amended in 1978, Congress attempted to end the debate by directing the Secretaries of Agriculture and the Interior to contract for independent research studies, to be developed under the auspices of the National Academy of Sciences, to provide answers to the rangeland damage question. The Academy's Phase III Final Report on those studies was submitted to Congress early this year, and has largely been ignored.

Because the NAS-recommended studies were not all undertaken due to inadequate funding, the Academy's report is not as complete or conclusive as might have been desired. However, the report casts serious doubt on much of the "common knowledge" regarding wild horses and burros which underlies the rationale for S. 457.

To begin with, the NAS report puts the problem of "excess" wild horses and burros in perspective. Livestock licensed to graze on the public lands outnumbered wild horses and burros by about 100 to 1 and consumed 23 times more forage in 1980. Over 1.5 million big game animals, such as pronghorn antelope, deer and elk, are found on lands administered by the Bureau of Land Management. Certainly that number is a fraction of the total big game population on all of the pubic lands. Estimates are that forage consumption by big game animals is about 10 times that of wild horses and burros. Therefore, the amount of forage consumed by fewer than 60,000 wild horses and burros on the public lands is a very small percentage of consumption by all animals who forage on the public lands.

The NAS study also sheds light on the so-callled "population explosion" of wild horses and burros. Claimed rates of annual population growth have sometimes exceeded 20 percent. The NAS reports, however, that the average yearly rate of increase is probably closer to 10 percent; much of the apparent population growth in past years has been the result of improved censusing techniques rather than an actual increase in the number of animals.

The NAS research committee was well aware of claims that overpopulations of wild horses and burros were seriously degrading the public rangelands. Although its report discussed several reported instances of severe impacts, the committee warned:

> We do not cite these examples to imply in any way that these kinds of severe impacts are widespread or common in the wild horse and burro ranges of western United States. In fact, we have seen very few areas with heavy vegetation impacts, although we have asked the BLM to show them to us.

The committee's chairman, Professor Frederic H. Wagner of Utah State University, confirmed this in an address to the 48th North American Wildlife and Natural Resources Conference in March of this year:

> Three reported cases of severe vegetation impacts by horses were reviewed in the Phase III report. The N.A.S. Committee asked to be shown areas of severe horse impacts, but was told by BLM that such areas were few and inaccessible. None was seen. Some evidence of former burro damage was observed in southwestern Arizona.

Evidence of generalized, severe degradation to the public rangelands by wild horses and burros seems nonexistent. While isolated problem areas probably do exist, no testimony was presented to the Committee on Energy and Natural Resources to support the proposition that over 55 percent of the existing wild horse and burro population must be removed to protect the public lands from overgrazing or to fulfill multiple-use goals.

It is therefore very difficult to accept the premise upon which S. 457 rests. This does not mean that I believe that wild horse and burro populations should be permitted to increase unchecked. The Secretaries have very broad authority under existing law to remove horses and burros when necessary, and they have exercised it regularly. The Adopt-A-Horse Program has generally worked well to place most of the animals removed from the public lands. New authority provided in this bill giving horse protection and humane groups a chance to take title to horses after the round-up and adoption but prior to sale will probably help. The Secretaries also have the authority to destroy aged, lame or ill animals.

Animal welfare groups that testified before the Committee have urged that it is far more humane to destroy lame or infirm animals, or animals debilitated by extreme age, than it is to sell them at auction and expose them to the stresses and inhumane conditions of transportation to slaughter. They have also urged that old but otherwise healthy animals simply be returned to the range to live out the few remaining years of their lives. These proposals make far more sense than prolonging, and in all likelihood increasing, the suffering of unadoptable horses and burros for the sake of a few dollars for the Federal Treasury.

In the final analysis, the need to sell wild horses and burros at auction depends on the assumption that tens of thousands must be removed from the Federal public lands. The assumption does not withstand scrutiny from a scientific viewpoint. Even if it did, selling unadoptable wild horses is neither humane nor consistent with the high purposes for which the Wild Horse Act was passed in 1971.

WENDELL H. FORD.

Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 457 as ordered reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Public Law 92–195—Dec. 15, 1971 as amended by Public Law 94–579—Oct. 21, 1976 and by Public Law 95–307—June 30, 1978

AN ACT To require the protection, management, and control of wild free-roaming horses and burros on public lands

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands.]

That Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West, and that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people. It is the policy of Congress that wild free-roaming horses and burros shall be protected from unauthorized capture, branding, harassment, or death; that a healthy wild free-roaming horse and burro population shall be maintained on the public lands; and that to accomplish this they are to be considered as an integral part of the natural system of the public lands and managed under the principle of multiple use.

Sec. 2. As used in this Act—

(a) "Secretary" means the Secretary of the Interior when used in connection with public lands administered by him through the Bureau of Land Management and the Secretary of Agriculture in connection with public lands administered by him through the Forest Service;

(b) "wild free-roaming horses and burros" means all unbranded and unclaimed horses and burros [on public lands of the United States:] *that use public lands as all or part of their habitat, or that have been removed from the public lands by the Secretary but have not lost status under section 3 of this Act;*

(c) "range" means the [amount] *area* of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public lands;

(d) "herd" means one or more [stallions and his mares; and] *bands using the same general area;*

(e) "public lands" means any lands administered by the Secretary of the Interior through the Bureau of Land Management or by the Secretary of Agriculture through the Forest Service[.]*;*

"(f) 'excess animals' means wild free-roaming horses or burros (1) which have been removed from an area by the Secretary pursuant to applicable law or, (2) which must be removed from an area in order to [preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area."] *maintain the appropriate management level as determined in the planning processes required by section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) and by the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600–1687); and*

(g) "band" means a group of wild horses or burros running together or a lone wild horse or burro.

SEC. 3. [(a) All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purpose of management and protection in accordance with the provisions of this Act. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation, where the Secretary after consultation with the wildlife agency of the State wherein any such range is proposed and with the Advisory Board established in section 7 of this Act deems such action desirable. The Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands. He shall consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory Board established in section 7 of this Act. All management activities shall be at the minimal feasible level and shall be carried out in consultation with the wildlife agency of the State wherein such lands are located in order to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species. Any adjustments in forage allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands.]

[(b)(1) The Secretary shall maintain a current inventory of wild free-roaming horses and burros on given areas of the public lands. The purpose of such inventory shall be to: make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals; determine appropriate management levels of wild free-roaming horses and burros on these

areas of the public lands; and determine whether appropriate management levels should be achieved by the removal or destruction of excess animals, or other options (such as sterilization, or natural controls on population levels). In making such determinations the Secretary shall consult with the United States Fish and Wildlife Service, wildlife agencies of the State or States wherein wild free-roaming horses and burros are located, such individuals independent of Federal and State government as have been recommended by the National Academy of Sciences, and such other individuals whom he determines have scientific expertise and special knowledge of wild horse and burro population, wildlife management and animal husbandry as related to rangeland management.]

(*a*) (*1*) *All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purpose of management and protection in accordance with the provisions of this Act. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation. The Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands.*

(*2*) *In administering this Act, the Secretary shall consult other Federal agencies, wildlife agencies of the State or States wherein wild free-roaming horses and burros are located, the Advisory Board established in Section 7 of this Act, and other individuals or organizations the Secretary determines have scientific expertise or special knowledge concerning wild horses and burros, wildlife management* and *animal husbandry and rangeland management.*

(*b*) (*1*) *All management activities for each herd area shall be in accordance with the resource management objectives established in land use plans. Such plans and activities shall be designed to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species. Any adjustments in forage allocations on any such lands shall take into consideration the needs of wildlife species which inhabit such lands.*

(*b*) (*2*) *The Secretary shall maintain a current inventory of wild free-roaming horses and burros on given areas of the public lands. The purpose of such inventory shall be to aid in the determination of whether and where the appropriate management level is being achieved or exceeded, and to obtain biological information on the animals for use in their management.*

[(2)] (*3*) Where the Secretary determines on the basis of (i) the current inventory of lands within his jurisdiction; (ii) information contained in any land use planning completed pursuant to section 202 of the Federal Land Policy and Management Act of 1976; (iii) information contained in court ordered environmental impact statements as defined in section 2 of the Public Range Lands Improvement Act of 1978; and (iv) such additional information as becomes available to him from time to time, [including that information developed in the research study mandated by this section,] or in the absence of the information contained in (i–iv) above on the basis of all information currently available to him, that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess

animals, [he shall immediately remove excess animals from the range so as to achieve appropriate management levels.] *he shall as soon as practicable remove excess animals from the area to achieve appropriate management levels and to accomplish appropriate herd management.* Such action shall be taken, in the following order and priority, until all excess animals have been removed [so as to restore a thriving natural ecological balance to the range and protect the range] *to restore a thriving natural ecological balance to the public lands, and protect the public lands* from the deterioration associated with overpopulation:

(A) The Secretary shall order old, sick, or lame animals to be destroyed in the most humane manner possible;

(B) The Secretary shall cause such number of additional excess wild free-roaming horses and burros to be humanely captured and removed from private maintenance and care for which he determines an adoption demand exists by qualified individuals, and for which he determines he can assure humane treatment and care (including proper tranportation, feeding, and handling): *Provided*, That, not more than four animals may be adopted per year by any individual unless the Secretary determines in writing that such individual is capable of humanely caring for more than four animals, including the transportation of such animals by the adopting party; and *the Secretary shall establish by regulation adoption fees that discourage private maintenance of excess animals for the purpose of commercial gain and maintain a viable adoption program;*

[(C) The Secretary shall cause additional excess wild free-roaming horses and burros for which an adoption demand by qualified individuals does not exist to be destroyed in the most humane and cost efficient manner possible.]

(C) After the Secretary has made all reasonable efforts to carry out the provisions of subparagraph (3)(b)(3)(B) and prior to exercising his authorities pursuant to subparagraph (3)(b)(3)(D), the Secretary shall offer to appropriate animal protection entities (as determined by the Secretary in his discretion), to grant, without cost, title to all unadopted excess wild free-roaming horses and burros. If any such entity or entities accept all or part of such offer the Secretary shall effectuate the grant of title to such entity or entities expeditiously. In the event that the Secretary receives offers to accept title to such animals which exceed the available supply, he shall grant title to such animals, to entities in an equitable manner.

(D) After the Secretary has carried out his responsibilities, under subparagraphs (3)(b)(3)(B) and (3)(b)(3)(C), he shall cause additional excess wild free-roaming horses and burros for which an adoption or acceptance demand by qualified individuals or entities does not exist to be sold at public auction or destroyed in the most humane, cost efficient manner possible. Provided, that when they are sold or destroyed, they shall become subject to all State and local humane and sanitation laws, and all Federal humane laws other than this Act; provided further, that the Secretary's authority to "sell excess wild and free-roaming horses and burros is expressly limited to 3,500 of such animals in fiscal year 1984; 3,500 in fiscal year 1985; 3,500 in fiscal year 1986; 3,500 in fiscal year 1987 and is terminated and prohibited thereafter.

(E) Revenue from the sale or adoption of excess wild free-roaming horses and burros pursuant to this Act shall be deposited with the Treasury in a special account and is hereby authorized to be appropriated and made available to the agency responsible for managing the lands from which the excess animals were removed, for activities associated with the management of wild free-roaming horses and burros including, but not limited to removal, sale, maintenance, habitat improvement, population management, and studies for the general welfare of wild free-roaming horses and burros.

[(3) For the purpose of furthering knowledge of wild horse and burro population dynamics and their interrelationship with wildlife, forage and water resources, and assisting him in making his determination as to what constitutes excess animals, the Secretary shall contract for a research study of such animals with such individuals independent of Federal and State government as may be recommended by the National Academy of Sciences for having scientific expertise and special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management. The terms and outline of such research study shall be determined by a research design panel to be appointed by the President of the National Academy of Sciences. Such study shall be completed and submitted by the Secretary to the Senate and House of Representatives on or before January 1, 1983.]

(c) Where excess animals have been transferred to a qualified individual for [adoption and] private maintenance pursuant to [this Act] *subparagraph (3)(b)(3)(B)* and [the Secretary determines that such individual has provided humane conditions, treatment and care] *there is no evidence of inhumane care or treatment* for such animal or animals for a period of one year, the Secretary is authorized [upon application by the transferee to grant title to not more than four animals] *to grant title* to the transferee at the end of the one-year period.

(d) Wild free-roaming horses and burros or their remains shall lose their status as wild free-roaming horses or burros and shall no longer be considered as falling within the purview of this Act—

(1) upon passage of title [pursuant to subsection (c) except for the limitation of subsection (c)(1)] *upon a grant pursuant to subparagraph (3)(b)(3)(C), at sale pursuant to subparagraph (3)(b)(3)(D), or pursuant to subsection (3)(c)* of this section; or

(2) if they have been transferred for private maintenance [or adoption] pursuant to this Act and die of natural causes before passage of title; or

(3) upon destruction by the Secretary or his designee pursuant to subsection (b) of this section; or

(4) if they die of natural causes on the public lands or on private lands [where maintained thereon pursuant to section 4 and disposal is authorized by the Secretary or his designee; or].

[(5) upon destruction or death for purposes of or incident to the program authorized in section 3 of this Act; *Provided*, That no wild free-roaming horse or burro or its remains may be sold or transferred for consideration for processing into commercial products.]

[SEC. 8. Any person who—

(1) willfully removes or attemps to remove a wild free-roaming horse or burro from the public lands, without authority from the Scretary, or

(2) converts a wild free-roaming horse or burro to private use, without authority from the Secretary, or

(3) maliciously causes the death or harassment of any wild free-roaming horse or burro, or

(4) processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro, or

(5) sells, directly or indirectly, a wild free-roaming horse or burro maintained on private or leased land pursuant to section 4 of this Act, or the remains thereof, or

(6) willfully violates a regulation issued pursuant to this Act, shall be subject to a fine of not more than $2,000, or imprisonment for not more than one year, or both. Any person so charged with such violation by the Secretary may be tried and sentenced by any United States commissioner or magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401, title 18, United States Code.]

SEC. 8(a). Any person who—

(1) knowingly removes or attempts to remove a wild free-roaming horse or burro from the public lands, without authority from the Secretary;

(2) sells except as specifically provided in section 3(b)(3)(D) of this Act, or converts without authority from the Secretary, to private use;

(3) maliciously causes the death or harassment of any wild free-roaming horse or burro;

(4) except for the Secretary, processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro; or

(5) knowingly violates a regulation issued pursuant to this Act, shall be subject to a fine of not more than $2,000, or imprisonment for not more than one year, or both. Any person so charged with such violation by the Secretary may be tried and sentenced by any United States commissioner or magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401, title 18, United States Code. Any person who previously has been convicted of a violation of this section shall, upon conviction of a second offense punishable pursuant to this section, be subject to a fine of not more than $10,000, or imprisonment for not more than two years, or both.

(b) Any employee designated by the Secretary of the Interior or the Secretary of Agriculture shall have power, without warrant, to arrest any person committing in the presence of such employee a violation of this Act or any regulation made pursuant thereto, and to take such person immediately for examination or trial before an officer or court of competent jurisdiction, and shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this Act or regulations made pursuant thereto. Any judge of a court established under the laws of

the United States, or any United States magistrate may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

[SEC. 9. In administering this Act, the Secretary may use or contract for the use of helicopters or, for the purpose of transporting captured animals, motor vehicles. Such use shall be undertaken only after a public hearing and under the direct supervision of the Secretary or of a duly authorized official or employee of the Department. The provisions of subsection (a) of the Act of September 8, 1959 (73 Stat. 470; 18 U.S.C. 47(a)) shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary.]

SEC. 9. In administering this Act and any laws pertaining to management of Federal lands, the Secretary or the head of any executive department or agency administering Federal lands may use or contract for the use of helicopters or, for the purpose of transporting captured horses or burros, motor vehicles. Such use shall be undertaken only after public notification and under the direct supervision of a duly authorized official of the department or agency. The provision of subsection (a) of the Act of September 8, 1959 (18 U.S.C. 47(a)), shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary or other agency head.

SEC. 10. Nothing in this Act shall be construed to authorize the Secretary to relocate wild free-roaming horses or burros to areas of the public lands where they [do not presently exist.] *did not exist on December 15, 1971.*

[SEC. 11. After the expiration of thirty calendar months following the date of enactment of this Act, and every twenty-four calendar months thereafter, the Secretaries of the Interior and Agriculture will submit to Congress a joint report on the administration of this Act, including a summary of enforcement and/or other actions taken thereunder, costs, and such recommendations for legislative or other actions as he might deem appropriate.]

SEC. 11. Within 12 months after the enactment of the amendments to this Act, and every 12 calendar months thereafter, the Secretary's of the Interior and Agriculture shall submit to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs a joint report on the administration of this Act as amended. The report shall include an overall assessment of the administration of the Act as amended and provide summary data on the number of animals sold, transferred or adopted; enforcement activities, and costs. The report shall include a recommendation for such legislative actions and other recommendations which the Secretary deems appropriate.

The Secretary of the Interior and the Secretary of Agriculture shall consult with respect to the implementation and enforcement of this Act and to the maximum feasible extent coordinate the activities of their respective departments and in the implementation and enforcement of this Act. The Secretaries are authorized and directed to undertake those studies of the habits of wild free-roaming horses and burros that they may deem necessary in order to carry out the provisions of this Act.

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